

## LEGISLATIVE COMMITTEE REPORT

June 13, 2016

A Legislative Committee meeting was held on Monday, June 13, 2016 at 6:00 p.m. in the Quorum Court Meeting Room, Benton County Administration Building, 215 East Central Avenue, Bentonville, Arkansas.

Committee Members Present: K. Harrison, Sheridan, J. Harrison, Sandlin, Anglin, Chiocco, Slinkard, Meyers

Others Present: JP Leadabrand, Assessor Linda Hambrick, Comptroller Brenda Guenther, Human Resources Manager Barbara Ludwig

Media: Tom Sissom – Northwest Arkansas Democrat-Gazette

Legislative Committee chair JP K. Harrison called the meeting to order at 6:00 p.m.

### **Public Comments:**

None.

### **JP K. Harrison's Conversation with the Association of Arkansas Counties Regarding Federal Overtime Changes:**

JP K. Harrison reported that he talked to the Association of Arkansas Counties after he received an email from JP Tom Allen about the recent overtime changes.

Human Resources Manager Barbara Ludwig stated that they passed the regulation and it will go into effect on December 01, 2016. She does not think that it will have much impact on this year, however, they may need to raise some people's salaries in December. The amount passed in the regulation is \$47,476 and they are talking about updating it every three years. She stated that they may consider moving people to hourly and tell them not to work overtime during the holidays. Not too many people will be changing; however, she will have a better estimate of the impact for 2017 at the next Personnel Committee meeting on June 21, 2016.

JP Leadabrand said that this is the one that was made up by the administration without going through Congress. He asked why it has to be followed.

Barbara Ludwig stated that it is a rule that is passed by the Department of Labor and they must follow regulations that come out of Washington.

JP Leadabrand stated that he would like to see it challenged. He stated that this is two parts: overtime, and the way a job is designated whether it is exempt or not.

Barbara Ludwig stated that it used to be a three or four-part test of duties to look at, and then they looked at minimum salary. The way things were done before, if they met that test, most likely they were meeting that minimum salary because it was very low. So basically it looked at what the job duties were instead of what they were making; now it is reversed. She would have to look at their job duties but, in most cases, she does not have to look at it if they are being paid \$47,465 because it does not matter what they do, if they make less than that, they will be an hourly employee eligible for overtime.

JP Leadabrand asked if they can re-designate the jobs.

Barbara Ludwig said that, going into 2017, they will have to look at changing some of the job descriptions. She said that there are a couple of Assistant Directors that work a lot of hours that will have to have some of their job duties re-assigned. She does not think it is going to hurt any employee, they will probably make more money once they go to hourly if they have access to overtime. However, she believes that it diminishes their stature a professional, and as a manager providing those types of services.

JP Slinkard asked if they changed the definition of professional jobs in the regulations.

JP Barbara Ludwig said they did not change the test at all; the only thing they changed was the wage amount.

JP K. Harrison stated that JP Allen suggested that they look at doing a lawsuit against them. He stated that he talked to the AAC and the best way to do this is to do a resolution, send a copy to them and send a copy to the Attorney General asking her to file on behalf of the State of Arkansas for a lawsuit, and ask them to stay this until the lawsuit is heard. He stated that part of the reason for this meeting is to see how the committee feels about sending a resolution to this effect to the Committee of the Whole on June 14, 2016. The AAC said if the Quorum Court does a resolution they would like a copy of it so they can send it out to the other counties.

JP Slinkard asked if other counties are falling into this same thing.

JP K. Harrison stated that they all are, and some of them may be hit worse than Benton County.

JP Anglin said that, at the meeting in April, she brought it up to them. A few of the bigger counties were aware of it, but the smaller counties were not aware of it.

JP K. Harrison said that the AAC did not have an objection but so far no one has taken any action. They suggested sending them a copy, and sending it straight to the attorney general.

JP J. Harrison stated that he agrees and thinks this overreach is ridiculous. He is glad that the AAC gave the green light to go forward with it.

JP J. Harrison made a motion to send a resolution to the June 14, 2016 Committee of the Whole agenda, seconded by JP Anglin.

JP Slinkard asked where Congressmen Boozman, Womack, and Cotton stand on this issue.

Barbara Ludwig stated that it was brought up in a committee in the House and Congressman Womack was a co-sponsor. She said that she has not seen it called up for a vote yet; they were waiting to see what happened in the House before they brought up a similar bill in the Senate. The International Association for Human Resource Managers send updates on it but she has not seen anything come through yet; they are lobbying very hard in Washington.

JP Slinkard asked if they have received anything in writing from Womack.

Barbara Ludwig stated that she sent them emails about her concerns with the Department of Labor and received emails back from them. She said that she would ask for an updated status from them.

JP K. Harrison stated that they still need to move forward with a resolution.

JP Meyers asked for clarification on what this resolution would do.

JP K. Harrison stated that it would request the Attorney General to file suit against this on behalf of the State of Arkansas to ask for a stay of this being enacted until it is heard.

JP Meyers asked where it would be heard at.

JP K. Harrison stated it would be heard by Federal court, but that it also buys time for the Congress and the Senate to take action, and it would buy time for a new administration under the Presidency.

JP Meyers stated, if nothing has been filed in Federal court, then this is asking the Attorney General to be the first state to file in Federal Court.

JP K. Harrison said that, yes, and there would probably be other states that would file.

JP Slinkard stated that they would pass a resolution urging our attorney general to file a lawsuit, and send it to the AAC, for them to send it to other counties and get them all together to send to the Attorney General.

JP Leadabrand said that some people will benefit from this in the county and there are some that do not benefit from it. Either way, this is completely out of nowhere and messes with the budget. He stated that they are trying to be fair about this for everyone.

Motion passed by unanimous show of hands vote.

JP Anglin asked Barbara Ludwig to provide an update from Congressman Womack's office at the June 14, 2016 Committee of the Whole meeting.

**Updating out-of-date sections of the Code of Ordinances of Benton County, Arkansas;**  
**Sponsor: JP Slinkard:**

JP Slinkard said that last year, right after she received the old code book, at that time she was not aware that they had already sent in for the revision of the code book. She went through the old code book and made some notes of things that might need to be updated. She said that she sent that up to the County Clerk's office and she owes a lot to Tena, Betsy, and Stefanie because they went through her notes and found some things that had already been changed in the code. There was a section about a special committee that the County Clerk's office said has been taken out of the new code book and it is now marked reserved. She stated that the County Complex Committee refers to a committee that was created in 1995 and last amended by O-95-02. She said that there are different standing committees now than when the code was first enacted. She said that the next section that she asked about was the cash advance policy: Stefanie sent her the ordinance that was passed and is in the new book so no action is needed on that one. She stated that the next section was in Division 3 of the old book, Section 2-176, and she went ahead and pulled up the Arkansas code regarding County Attorneys. She read from the code book which says: "the county attorney shall be a staff member of the County Judge. The County attorney should be concurrently responsible to the prosecuting attorney and shall work from the prosecuting attorney's office." She asked the committee if this needs to be updated.

JP K. Harrison stated that this would need to be updated because County Attorney George Spence is on contract and works out of his private office.

JP Sandlin said they need to find where it was updated because there was something changed whenever that took place.

JP Slinkard read A.C.A. §16-21-114 to the JPs.

JP Leadabrand asked why the County Attorney does not assemble all these state and county codes that apply to the County Attorney, and determine if there are things that need to be changed. He could give his opinion on it and present this to the JPs.

JP Slinkard stated that the ordinance in the old book was written in 1977 and she does not know if it has been changed in the new code or not. She said that in many of those sections, it talked about Boards, Commissions and Authorities. The County Clerk's office said that the Solid Waste Board is now a regional board so sections 2-345 through 2-351 need to be taken out of the code book. She said that she does not know if some of the old, outdated statutes are still in the new code book.

She did not have time to go through it, the County Clerk's office did that and she appreciates it very much.

JP Leadabrand said that the county attorney appears in court representing Benton County, so they need to make sure everything is correct.

JP Slinkard stated that she can meet with the County Clerk, speak to George Spence, and ask what needs to be done in going through the new supplement.

JP Meyers asked what Municode's responsibility is and if they research if the state ordinances are no longer applicable.

JP Slinkard stated that they are supposed to and, in the back of the book, there is a listing of all the state statutes that are referenced.

JP K. Harrison suggested that JP Slinkard get with the County Clerk's Office and County Attorney George Spence about reviewing it, making the necessary revisions, and present it at the July 12, 2016 Committee of the Whole meeting. He stated that, once this is determined, it does not need to come back before the Legislative Committee. He said that the Legislative Committee does not need to take any action on this tonight.

### **Jail Fees:**

JP K. Harrison stated that this topic is in two parts. The first is that last year they passed a \$5 increase for this year which got the county to the point of losing \$5 per day, per city inmate. He suggested a \$5 increase for 2017 to break even on that and stated that he has been working with Comptroller Brenda Guenther on this.

Comptroller Brenda Guenther presented information about jail fees to the JPs from the dashboard. In 2013, the calculation was just under \$50. In 2014, the cost-per-inmate was around \$48. Back in 2014, the Legislative Audit did an audit of various counties and came up with an average state inmate cost per day of \$49.35. The state at that time was only reimbursing \$28, they are now reimbursing \$30. She said, however, that they are only talking about the city side right now. Based on the legislative audit and their own calculations, they are just under \$50 so it seems reasonable.

JP K. Harrison said that, using this number, if they average 100 or so inmates per day, the new jail expansion pays for itself in about two years.

Brenda Guenther stated that this is raw costs only. Adding in the additional costs for staffing and all of that, if there were 100 inmates in there full-time, 365 days a year, which there will probably not be, the payback would be just under two years. At any rate, it would be a good payback. She said the new pods are going to be for misdemeanors, which is city.

JP K. Harrison stated that just breaking even would be nice and there should not be a reason that they cannot break even on this.

JP Sandlin made a motion that this be raised an additional \$5 for the FY 2017 budget and to send this to the Finance Committee for consideration, seconded by JP J. Harrison.

JP Anglin asked if they have talked to any of the city people.

JP K. Harrison stated that he forewarned them last year that this was going to be their plan when they talked about the raise last year. He said that none of them had an issue with it then as they felt that the county should be breaking even. Their biggest concern was when the county is going to make the state start breaking even. He said he would like to do this at this time of year because, in four months, the cities are going to start working on their budgets and he wants to make sure they have enough time to plan for this. This is the county's cost and the state law allows them to

break even with the city prisoners. They were told last year that they had planned on trying to get to that point. There were many years that the county lost money, so they are trying to get to where they are breaking even, and then they will not have to do it until the county starts losing money again.

JP Meyers asked who Kim Motherwell is.

Brenda Guenther said that she is the state legislative auditor.

JP Meyers said that, according to her, the cost was \$45.74 and now the average cost is \$49.35. He asked why there is a jump.

Brenda Guenther said that the average cost of the state prisoners per day is based on about twenty counties.

JP Sandlin added that it was also two years ago.

JP K. Harrison said that, using the state's formula, Brenda did her own analysis.

JP Meyers stated that he is against hitting the cities with this again, even though they did it last year and he made the motion.

JP K. Harrison said, even if the state was paying their share, this would still be the county's cost.

JP Meyers said he does not recall doing it in two stages.

JP J. Harrison said that they did.

JP Meyers said he does not like increasing it by \$5 every year.

JP K. Harrison said they are not doing it every year.

JP J. Harrison said they were originally going to get it up to \$50 before they decided to split it over two years.

JP K. Harrison stated that this will go to the Finance Committee and they may put it on the Budget Committee agenda.

JP Anglin stated that she hopes to have some input from the cities at the Finance Committee meeting discussion.

A show of hands vote was recorded as follows:

6 for:	K. Harrison, Sheridan, J. Harrison, Sandlin, Anglin, Chiocco, Slinkard
1 against:	Meyers

Motion passed to send it to the July 07, 2016 Finance Committee agenda.

JP K. Harrison stated that the second part of this is the state. He said that they need to do a resolution to the governor and to the legislators to ask them for a long range plan for how to keep the cost in line with what the county's expenses are. He said that they have been told the cost by the legislative audit, but every year no one takes any action. He said they moved it \$2 per year, so instead of losing \$22 per day they are losing \$20 per day. He stated that this county jail was built by the county tax payers to house county prisoners. He said that, if they house state prisoners, the state tells the county that they will house them and what the state will pay. Yet they go to Texas and pay \$50 per day to an entity out-of-state what it costs Benton County. He suggested sending a resolution to the governor that states that the Quorum Court is not happy that the state pays an out-of-state entity in Texas \$50 per day to house prisoners when that is the county's cost. He said, if they do not let them know they are upset about it, nothing is ever going to change.

JP Slinkard said that, some time ago, Josh at the AAC had an audit report. She emailed him and asked for it. He sent her something but it was not the actual report that the auditors had done.

Brenda Guenther stated that she has 2009's report. Last year the county was selected to submit information. She has not called the AAC but there is nothing on their website. They are doing it every five years.

After a short discussion on the best way to proceed, it was determined that JPs Anglin and Slinkard would arrange for the legislators to speak at a Legislative Committee meeting in July to address this issue.

JP K. Harrison suggested that the legislators give an update on roads, any new legislation that they have going forward that could affect the county, and anything they are proposing to work on behalf of Benton County. He stated that they will need to forewarn them that jail fees is a big issue. He also asked the JPs to send any topics they would like to discuss to the Quorum Court Coordinator to place on the meeting's agenda.

JP Sandlin stated that JP K. Harrison should also mention it at tomorrow night's Committee of the Whole meeting in case the other JPs have something to add to the agenda.

JP K. Harrison said he hopes most of the Quorum Court members will attend the meeting.

**Ordinance Request Adopting by Reference Codification of the Ordinances of Benton County, Arkansas; Sponsor: JP Slinkard:**

JP Slinkard stated that this is an ordinance request that by Arkansas Law they have to do an ordinance adopting the codification of ordinances. She said that this ordinance is the intent of the recodification adopting the code by reference. She said that this ordinance does set out the penalty for violations of the code which is much the same as what is in the code. She said that George Spence has prepared this ordinance. She said they need to have this on the agenda for tomorrow night's Committee of the Whole. She stated that she is going to call County Attorney George Spence tomorrow about the wording in the third paragraph which she read as: "the intent to adopt the code by reference was published after the second reading and prior to the final adoption of the code." She said that, according to state law, it must be read three times and it is published as all other ordinances are done which is published after they are adopted, so she will ask George Spence about this.

JP Sandlin made a motion to approve it with the knowledge that there may be a Scrivener's error and amend it if needed, and send it to the July 14, 2016 Committee of the Whole meeting, seconded by JP J. Harrison.

JP Meyers asked how long they have by law to approve it by reference.

JP Slinkard said that state law does not give a timeframe and she read the law to the JPs.

JP K. Harrison said it will take three months for three separate readings.

JP Slinkard said that it is true unless there is a suspension of the rules.

JP Slinkard made a motion to approve it and forward it to the Committee of the Whole, seconded by JP Chiocco.

JP K. Harrison stated that there is already a motion on the floor in discussion; JP Sandlin made the motion and JP J. Harrison seconded.

Motion passed by unanimous show of hands vote.

**Other Business:**

JP Sandlin announced a Personnel Committee meeting on Tuesday, June 21, 2016.

JP K. Harrison announced a Committee of the Whole meeting on Tuesday, June 14, 2016.

**Adjournment:**

JP K. Harrison declared the meeting adjourned at 7:01 p.m.